IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO. 3191 OF 2007

IN

FIRST APPEAL ST. NO. 5749 OF 2006

MANISHA S. KADRI & ORS. ... APPLICANTS.

VS.

UNITED INDIA INSURANCE CO.LTD. ... RESPONDENTS.

RAJESH BEHERE FOR THE APPLICANT IN CA. 3189/07, 3190/07
& 3191/07 & RESPONDENT IN C.A. NO. 3011/07 AND 3009/07
& FA ST.NO. 5724/2006 & 5749/2006.
MR. PANKAJ DAS I/B. R.S.DARANDALE FOR RESPONDENT NO. 1.
IN CA 31819, 3190/07 & 3191/07 AND APPELLANT IN C.A.
NO. 3011/07, 3009/07 & FA ST NO. 5724/06 & 5749/06.

CORAM : J.N.PATEL & A.A. SAYED, JJ.

DATE : July 2, 2007.

P.C.

1. Heard.

2. The learned Counsel for the Respondent-claimant have filed this application seeking clarification of the

Order passed by the in operative Part of the Order of the MACP No. 58 of 1995.

3. It is submitted that MACP No. 58 of 1995 and 63 of 1995 came to be disposed of by a common Judgment and Order dated 6.5.2005, wherein in MACP No. 63 of 1995, the Court has awarded interest from the date of the filing of the petition and according to the learned Counsel for the respondent-claimant, in MAC NO. 58 of 1995, may be due to inadvertence instead of mentioning in the operative Part of the Order, the interest from the date of the filing of the petition, it has been mentioned from the date of the Order, till the payment is made.

3. It is submitted by the learned Counsel for the applicant= (Original claimant-respondent) that this has occurred due to inadvertence, as otherwise there is no reason why interest should not be granted from the date of filing of the petition, which has been rightly granted in MACP NO. 63 OF 1995. It is further submitted by the learned Counsel that for awarding the interest from the date of the Order, no reasons are assigned thereby depriving the claimant of interest from the date of filing of the petition and, therefore, the Operative Order in MACP NO. 58 OF 1995 requires to be corrected.

4. The learned Counsel appearing for the respondent (appellant-original respondent- insurance company) submits that this issue can be decided at the time of finally hearing of the Appeal, as otherwise it would unnecessarily prejudice the case of the Appellant.

5. Though, in our view, the contentions of the appellant appears to be justified and ultimately if the appellant - Insurance Company is required to pay the interest from the date of filing of the claim petition then the appellant will have to calculate the same accordingly.

6. It is well settled principle that interest cannot; be claimed on interest, the applicant-claimant would be deprived of this amount of interest, if in case, the impugned Order is upheld. Therefore, we direct the Respondent-Insurance Company, the Original respondent and Appellant in this matter, to calculate the interest in MACP NO. 58 OF 1995, from the date of the filing of the claim petition and deposit the same in M.A.C.T. Court at Thane, within a period of four weeks from today.

7. This Order has been passed without prejudice to all the rights and contentions of the Insurance-Company (Appelant-Original respondent) and if at all this Court decides the matter in its favour on this issue, the same

can be accounted for by way of set off.

8. In view of these observations, the application stands disposed of.

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[A. A.Sayed, J] [J.N.Patel, J.]